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TENNESSEE REGULATORY AUTHORITY

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April 11, 2005

T.R.A. DOCKET ROOM

*In re: Petition of Kings Chapel Capacity, LLC for )  
a Declaratory Ruling Regarding the Assignment of )  
Wastewater Service Territory to Private Utilities in )  
Tennessee )*

Docket No. 05-00062

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**RESPONSE OF TENNESSEE WASTEWATER SYSTEMS, INC. TO KINGS CHAPEL  
CAPACITY, LLC'S MOTION TO STRIKE**

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Tennessee Wastewater Systems, Inc. ("TWS") respectfully submits the following response to the "Motion to Strike" filed by Kings Chapel Capacity, LLC ("KCC").

In its Motion, KCC urges the Tennessee Regulatory Authority ("TRA" or "Authority") to "strike" the Petition to Intervene filed by TWS. In support of this Motion, KCC makes the following arguments: (1) TWS lacks the standing to file a petition to intervene; (2) the Petition to Intervene is factually and/or legally insufficient; (3) T.C.A. § 29-14-102 prohibits TWS from filing a petition to intervene in this docket; and (4) TWS is using its Petition as an indirect way of appealing the TRA's decision in Docket No. 03-00329.<sup>1</sup>

I. and II. TWS has met the standard set out in T.C.A. § 4-5-310 and TRA Rule 1220-1-2-.08 for interventions in administrative cases.

Under § 4-5-310 of the Uniform Administrative Procedures Act, petitions to intervene shall be granted if:

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<sup>1</sup> KCC also raises the issue of Notice, presumably relating to the Authority's placing of this docket on the April 4, 2005 Agenda Conference. This issue, however, does not relate to TWS, and thus, will not be addressed in this response.

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Likewise, under TRA Rule 1220-1-2-.08, petitions to intervene shall be granted upon a showing that the petitioner's "legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding...." TRA Rule 1220-1-2-.08 also directs petitioners to file interventions at least seven days prior to the hearing in the case.

TWS' Petition to Intervene meets the standard in both T.C.A. §4-5-310 and TRA Rule 1220-1-2-.08. If TWS does not have an interest in this docket, it is difficult to see who would. In TWS' Petition, TWS stated that, "TWS currently holds multiple Certificates of Convenience and Necessity to provide wastewater service in Tennessee and is currently providing and maintaining wastewater service in areas throughout the State of Tennessee." Petition at 1. TWS' Petition goes on to explain that as a holder of multiple CCNs to provide wastewater service, TWS has an interest in protecting the rights and privileges arising from those certificates. Id. at 2. These facts are more than enough to justify intervention in this docket by TWS, especially in light of what KCC is asking the Authority to do in the docket—to determine what rights providers are entitled to as holders of CCNs to provide wastewater service and to apply such a ruling to CCNs previously approved by the Authority. Id. at 1.

TWS has provided the Authority with facts demonstrating why TWS' rights may be affected by the outcome of this docket. Furthermore, the Petition filed by TWS was filed prior to a hearing being set in this docket, thus satisfying the seven-day requirement as well as the requirement that the intervention not impair "the interests of justice and the orderly and prompt conduct of the proceedings." As such, TWS has satisfied the intervention standard and, furthermore, has standing to participate in this docket.

III. Section 29-14-102 in no way prohibits TWS from filing a petition to intervene in this docket.

In its Motion, KCC cites T.C.A. § 29-14-102 as support for its argument that TWS is prohibited from filing an intervention in this docket. Motion at 1-2. According to KCC, "Declaratory Rulings are not subject to objection under T.C.A. § 29-14-102." *Id.* at 2. This section has nothing to do with a petition to intervene, but simply states that parties may not attack an action because such action was instituted in order to seek a declaratory order.

TWS' Petition is not an "objection" to anything, including the fact that KCC is asking for a declaratory order. TWS is simply seeking to intervene in this docket in order to protect its rights and interests arising from its CCNs. The TRA obviously does not view § 29-14-102 as a bar to interventions in declaratory judgment dockets, as the agency has granted interventions in such dockets before. See Petition of Frontier Communications, Inc. for a Declaratory Ruling, Docket No. 04-00379, in which the Authority issued an order granting Twin Lakes Telephone Cooperative Corporation's Petition To Intervene on January 12, 2005 and issued an order granting North Central Telephone Cooperative, Inc.'s Petition For Leave To Intervene on January 13, 2005. Therefore, § 29-14-102 is inapposite to TWS' right to intervene in this docket.

IV. TWS is not using its Petition to appeal the decision in Docket No. 03-00329.

Finally, KCC asserts that TWS is using its Petition to Intervene in order to attempt to appeal the decision in Docket No. 03-00329. Motion at 3. This assertion is meritless. TWS is not trying to thwart the TRA's well-established system for appealing decisions. Again, TWS is simply trying to participate in a docket, which has clear implications for the rights TWS has under its CCNs as well as the manner in which TWS can exercise those rights. The right of parties like TWS to intervene in cases such as the one at hand is well established and clear.

**CONCLUSION**

TWS has clearly demonstrated that it has "legal rights, duties, privileges, immunities or other legal interests" which may be affected by the outcome of this docket. TWS has complied with all of the requirements for intervention and as such, should be granted permission to intervene by the Authority.<sup>2</sup>

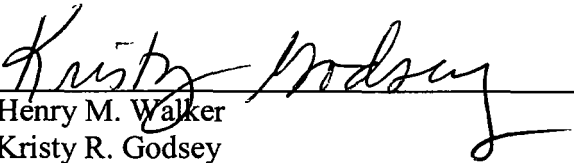
Therefore, TWS respectfully urges the Authority to deny KCC's Motion to Strike and grant the Petition to Intervene.

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<sup>2</sup> KCC further asserts that nothing in TWS' Petition is "inconsistent with the requests in and/or in conflict with the Petition for Declaratory Relief filed herein and therefore, the Petition to Intervene can operate as an endorsement for the need for the declaratory relief sought." Motion at 3. TWS strongly disagrees with this statement. Parties file petitions to intervene in order to show that they should be granted permission to participate in a docket. Parties are not expected to set out their case in such petitions. Regardless, KCC's argument is nonsensical.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

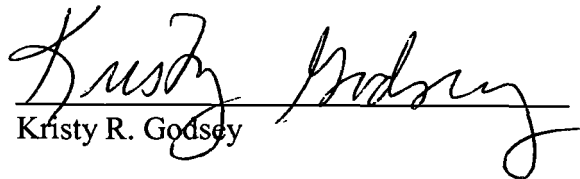
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

Richard Militana, Esq.  
5845 Old Highway 96  
Franklin, Tennessee 37064

This 11<sup>th</sup> day of April, 2005.

  
Kristy R. Godsey